

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
October 30, 2007 Session

STATE OF TENNESSEE v. MICHAEL COPPOCK

Appeal from the Criminal Court for Anderson County
No. A6CR0275 Donald R. Elledge, Judge

No. E2007-00026-CCA-R3-CD - Filed January 14, 2008

In June 2006 the defendant, Michael Coppock, was arrested for simple possession of marijuana, a Class A misdemeanor. As a condition of his bond, the defendant agreed to submit to random drug tests as administered by the local probation department. In November 2006, the defendant appeared before the Anderson County General Sessions Court and, after informing the court that he could not pass a random drug test, was jailed for forty-eight hours. The defendant appealed to the Criminal Court for Anderson County, which affirmed the general sessions court's bond conditions and imposed jail sentence. The defendant appeals the circuit court's ruling, contending that drug testing is an improper condition of bond and that the general sessions court erred by ordering the defendant to serve jail time. After reviewing the record, we conclude that the portion of the defendant's appeal concerning the propriety of random drug testing as a bond condition is not properly before this court. That portion of the appeal is therefore dismissed. However, because the general sessions court exceeded its authority by jailing the defendant, we grant the defendant a writ of certiorari and conclude that the sessions court violated the defendant's due process rights by ordering the jail sentence. Therefore, we dismiss the order to serve jail time imposed against the defendant.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed in Part;
Appeal Dismissed in Part.**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which DAVID H. WELLES and DAVID G. HAYES, JJ., joined.

J. Thomas Marshall, Jr., District Public Defender; Nancy C. Meyer, Assistant District Public Defender, for the appellant, Michael Coppock.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel West Harmon, Assistant Attorney General; David S. Clark, District Attorney General; Sandra Donaghy, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

According to an Affidavit of Complaint filed in Anderson County General Sessions Court, on June 4, 2006, Officer John Cuel, while on routine patrol with the Norris Police Department, observed the defendant in an argument with his wife outside a vehicle located in a driveway. The defendant's wife signaled for help, at which point Officer Cuel approached the defendant, who appeared intoxicated. The defendant admitted that he had consumed three and a half beers during the evening. The defendant then gave Officer Cuel permission to search his vehicle. The search revealed a "green leafy substance believed to be marijuana" inside the vehicle's glove department and five unnamed alcoholic beverages in a cooler inside the trunk. At that point, Officer Cuel arrested the defendant, who was later charged with public intoxication and misdemeanor possession of marijuana.

As a condition of his appearance bond, on June 5 the defendant signed a form entitled "Additional Bond Conditions," in which the defendant agreed to (1) refrain from using any illegal drugs or prohibited substances; (2) refrain from associating with persons who use illegal or prohibited substances; and (3) report following notice from the Probation Office within forty-eight hours to the Anderson County Probation Department to submit to a random drug test. In signing the form, the defendant also acknowledged that "[f]ailure to report constitutes a violation of my bond conditions and may lead to my bond being revoked."

On November 1, 2006, the general sessions court ordered the defendant to serve forty-eight hours in the Anderson County Jail. Although the record is silent as to the condition of bond violated, the manner in which bond was violated, and the date on which the violation occurred, the likely scenario regarding the defendant's case was outlined in a brief filed by the state in response to the defendant's appeal to the circuit court:

A document filed in the cases [of two other defendants], entitled "Stipulations,"¹ recites a general practice attributed to [Anderson County] General Sessions Judge [Don A.] Layton wherein inquiry is made of a defendant on a return court date concerning [the defendant's] ability to "pass" a drug test. If the defendant states he cannot pass the test, he is sentenced to 48 hours jail. If the defendant states he can pass a test, sometimes one is given and other times it is not. If a defendant reports he can pass a test but later fails it, he is sentenced to serve 10 days in jail. The Stipulations indicate this process is followed whether [the] defendant is represented, or not, and whether counsel is present or not. Any drug test given would be administered by the Probation officer or the Pre-Trial Release Officer. The Stipulation reports that neither the defendant nor his attorney is provided with the test results. . . . Although the Record on [defendant Coppock's case] appears silent as to

¹This document does not appear in the record on appeal.

the alleged violations, the sanction imposed appears to follow this outlined scheme.²

The defendant subsequently filed a notice of appeal and a petition for writ of certiorari in the Anderson County Criminal Court. On December 8, 2006, a hearing on the defendant's appeals was held. At that hearing, the defendant argued that random drug testing was an improper condition of his bond and that the general sessions court improperly jailed him. At the conclusion of the hearing, the criminal court upheld the validity of the sessions court's actions in imposing the bond condition and jailing the defendant. The defendant filed a notice of appeal to this court on January 4, 2007.

ANALYSIS

Drug Testing as a Condition of Defendant's Bond

The state initially contends that this court does not have jurisdiction to hear the defendant's appeal. The state is correct concerning the defendant's challenge to the propriety of random drug testing as a condition of bond. In Tennessee, a defendant's challenge to the actions of a court "in granting, denying, setting, or altering conditions of the defendant's release," including bond conditions, are reviewed pursuant to the procedures established in Tennessee Code Annotated section 40-11-144. If the court is "a trial court from which an appeal lies to the supreme court or court of criminal appeals," review is conducted "in the manner provided in the Tennessee Rules of Appellate Procedure." Tenn. Code Ann. § 40-11-144(a) (2006). If the court is inferior to the trial court, review must be sought via a writ of certiorari to the trial court. *Id.* § (b).

In this case, the defendant properly sought review of the bond conditions imposed by the general sessions court by filing a petition for writ of certiorari to the Anderson County Criminal Court. The defendant did not, however, follow the proper procedure in appealing the circuit court's ruling concerning the defendant's bond conditions. According to Rule 8(a) of the Tennessee Rules of Appellate Procedure, a defendant seeking review of a trial court's pre-conviction order granting, denying, setting, or altering conditions of the defendant's release must first file a written motion for the relief sought in the trial court. If the trial court denies the motion, the defendant may then appeal to this court. *Id.* The defendant did not file a Rule 8 motion in the circuit court, and because the circuit court acted legally and within its jurisdiction in considering the defendant's appeal from general sessions court, this court may not address the defendant's appeal concerning the bond conditions pursuant to a writ of certiorari. *See* Tenn. Code Ann. § 27-8-101 (2000) (outlining circumstances in which writ of certiorari may be granted). Because this court does not have jurisdiction to hear the defendant's appeal regarding the conditions of his bond, we dismiss that portion of the defendant's appeal.

²In his brief, the defendant states that he received the forty-eight hour jail sentence after he appeared in general sessions court on November 1, 2006, and informed the court that he could not pass a drug test. It is unclear from the record why the defendant was appearing in court that day.

Jailing Defendant for Violating Bond Condition

The defendant's appeal concerning his being placed in jail after admitting that he could not pass a drug test, however, is another matter. The defendant's appeal of his jail sentence is not subject to Rule 3 review. However, in rare circumstances this court may treat an improperly filed appeal as a petition for a writ of certiorari. See Tenn. Code Ann. § 27-8-101. The writ is limited to situations where an inferior tribunal has exceeded its jurisdiction or acted illegally where "no other plain, speedy, or adequate remedy is available." Id. We conclude that both elements of the statutory requirement for granting a writ of certiorari are met regarding the defendant's forty-eight-hour jail sentence. Accordingly, we will grant the defendant a writ of certiorari and consider the issue on its merits.

In this case, the defendant secured his release following his arrest by entering into a surety agreement with a licensed bail bondsman pursuant to Tennessee Code Annotated § 40-11-122(3). "If the defendant whose release is secured under § 40-11-122 does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited." Tenn. Code Ann. § 40-11-139(a) (2006). As the state noted in its reply brief to the defendant's appeal to the circuit court, "[t]he [r]ecord is silent as to the effect of the proceeding on the bond itself or the conditions. The stipulated facts do not recite different conditions of bond following the proceeding and the revocation of bond. There is no evidence of a new bond post-hearing yet before disposition." Therefore, we may reasonably conclude that the defendant's jail sentence did not result from his bond being revoked. Our review of the record also leads us to conclude that the general sessions court did not jail the defendant pursuant to a criminal contempt finding, a conclusion that the trial court also reached on appeal. The record also does not indicate that the defendant committed another offense for which he could have been placed in jail. Thus, there was no legal justification for the general sessions court ordering the defendant to serve a forty-eight-hour jail sentence. Accordingly, we conclude that the defendant's sentence violated his right to due process of law, See U.S. Const. amend. XIV, § 1; Tenn. Cons. art. I, § 8; see also Tenn. R. Crim. P. 42, and reverse the general sessions court's order ordering the defendant to serve forty-eight hours in jail.

CONCLUSION

In consideration of the foregoing and the record as a whole, the portion of the defendant's appeal concerning the propriety of drug testing as a condition of bond is dismissed for lack of jurisdiction. We also conclude that the general sessions court exceeded its jurisdiction and acted illegally in ordering the defendant to serve forty-eight hours in jail, and that the court's actions violated the defendant's due process rights. Accordingly, we reverse the judgment of the trial court as to that issue. Because our ruling is dispositive, we also dismiss the order to serve jail sentence imposed against the defendant.

D. KELLY THOMAS, JR., JUDGE

